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September 14, 2005

BY HAND AND ELECTRONIC MAIL

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 04-33: AT&T's Opposition To Verizon's Partial Clarification and/or Reconsideration Motion

Dear Secretary Cottrell:

Pursuant to Hearing Office Reyes' memorandum of August 25, 2005, AT&T files this letter as its opposition to Verizon's Motion for Partial Clarification and/or Reconsideration of Arbitration Order, filed on August 24, 2005 ("*Reconsideration Motion*").

In its *Reconsideration Motion*, Verizon asks the Department to reconsider its decision in the July 14, 2005 Arbitration Order ("*Arbitration Order"*) to set reasonable limits on the amount of time Verizon may wait to challenge a CLEC's certification of entitlement to a UNE loop or transport facility. *Reconsideration Motion*, at 12. According to Verizon it is "inappropriate" to require that Verizon bear the risk of missing an "artificial" deadline. *Reconsideration Motion*, at 13.

Apparently, Verizon believes that, while it is inappropriate for it to bear the risk of missing a deadline – a risk that is totally within Verizon's ability to control – it is appropriate for CLECs to bear an indefinite risk that Verizon may one day, months or years later, decide to challenge a CLEC certification. The Department's decision reflects a reasonable balance that allows Verizon to challenge CLEC certification, but imposes a deadline necessary to "prevent accrual of large retroactive bills if Verizon delays challenging a CLEC request for months or even years." *Arbitration Order*, at 288.

"Accrual of large retroactive bills" is not an academic concern in connection with Verizon billing practices. With increasing frequency Verizon has sought to tag CLECs, including AT&T, with millions of dollars in bills for past transactions for which, usually as result of its own errors or oversight, Verizon incorrectly billed in the first place. These charges pose significant administrative problems for the CLECs, since, given the age of many of these transactions, they implicate budgets that may already have been closed and charges that cannot be recovered from end user customers, such as those who may have moved on to other providers. Indeed, simply attempting to determine the accuracy of Verizon's claims may not be possible, since the transactions may involve business records that are difficult to retrieve.

In fact, over the past several months, AT&T has received multiple letters related to a variety of different charges in many different states warning of Verizon's intentions to backbill for millions of dollars of charges. Some of the charges relate to transactions in 2002, and many of them to transactions in 2003. Such practices by Verizon create huge contingent liabilities for carriers forced to do business with Verizon to obtain loops and transport facilities necessary to serve their own customers. These contingent liabilities create pressures and problems on the balance sheets of competitive carriers, problems that could be easily avoided if Verizon were required to follow reasonable billing practices.

Against these very real CLEC concerns, Verizon opposes the idea of any deadline at all by raising a specious "arbitrage" concern and by arguing that backbilling is a routine practice that should not be disturbed. *Reconsideration Motion*, at 13. Neither of these concerns warrants reconsideration of the Department's order. Arbitrage in this instance would require that CLECs systematically commit fraud *and* that Verizon fail to implement systems to catch it. Neither is a likely eventuality. Because systematic fraud is – by definition – systematic, the likelihood of discovery is great. Nothing deters better than the fear of being caught. If Verizon decides not to implement systems necessary to challenge a CLEC certification within 30 days, it simply means that the likelihood of false certifications is so low as to not justify the incurrence of costs to detect them. And, whatever costs Verizon may incur must be balanced against the financial and non-financial costs that CLECs bear as a result of the contingent liabilities that Verizon's practices will create in the absence of a challenge deadline.

With regard to Verizon's second basis for opposing a deadline requirement, Verizon's argument that backbilling is a routine practice *supports* the Department's decision to impose a thirty day deadline in the specific matter before it. As explained above, Verizon has abused its right to backbill wherever it has such a right. In this case, where the Department must establish the terms and conditions for provisioning UNEs

required by the *TRRO*,[1] the Department is correct to include a term that prevents such abuse in this case.

Finally, Verizon argues that, if there must be a deadline, then the thirty day requirement is too short. Verizon complains that it will have to modify its systems in order to meet the thirty day requirement. *Reconsideration Motion*, at 13-14. It should be noted, however, that Verizon nowhere states that it cannot implement such systems. This issue is simply a matter of cost, and as noted above, if it is worth it, Verizon will implement the system. In any event, it is clear, based on Verizon's own admission, that it can comply with a deadline for certification challenges. *Reconsideration Motion*, 14. The Department, therefore, should not eliminate a deadline requirement, when the result will be "accrual of large retroactive bills." *Arbitration Order*, at 288.

In arbitrating contract provisions related to the provisioning of loop and transport UNEs pursuant to the *Triennial Review Remand Order*, the Department has the authority to establish reasonable terms and conditions. On this issue, it has wisely exercised that authority to balance the competing interests of Verizon and the CLECs by establishing Verizon's contract right to challenge CLEC certifications, but requiring Verizon to exercise that right within thirty days. The Department should not reconsider that decision now.[2]

Kindly acknowledge receipt of this filing by date stamping a copy of this cover letter and returning it to the waiting messenger.

Thank you very much.

Respectfully submitted,

Jay E. Gruber

cc: D.T.E. 04-33 Service List

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[1] In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290 (Rel. Feb. 4, 2005) ("*TRRO*" or "*Triennial Review Remand Order*").

[2] AT&T's decision to respond to only one of the five issues raised in Verizon's *Reconsideration Motion* is based on a range of factors and should not be construed as agreement with Verizon's position on the other four issues.